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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

CHELSEY THERESA GRAY,

Plaintiff and Appellant,

v.

CYNTHIA EDDLEMAN et al.,

Defendants and Respondents.

G050816

(Super. Ct. No. 30-2014-00719135)

O P I N I O N

Appeal from orders of the Superior Court of Orange County, Kirk H. Nakamura, Judge. Affirmed.

Coleman MacDonald Law Group and Thomas J. Conroy; Greines, Martin, Stein & Richland and Cynthia E. Tobisman for Plaintiff and Appellant.

The Roberts Law Firm and Jeffrey T. Roberts for Defendants and Respondents.

INTRODUCTION

The trial court awarded respondents James and Cynthia Eddleman their costs after appellant Chelsea Gray dismissed her interpleader action – one in which they and the trustee in Gray’s bankruptcy were defendants. Gray contends this award was erroneous; *she* should have been granted *her* costs.

We affirm the orders granting the Eddlemans’ cost motion and denying Gray’s. The interpleader action Gray filed was dismissed before anyone, including Gray, received any relief afforded by the statutes governing interpleader. When neither the plaintiff nor the defendant obtains any relief, Code of Civil Procedure section 1032 designates the defendant as the prevailing party entitled to costs. That is how the trial court ruled.

FACTS

In July 2011, an auto accident involving Gray and the Eddlemans’ daughter resulted in the latter’s death. In May 2012, Gray pleaded guilty to vehicular manslaughter; her sentence included a \$27,000 restitution payment to the Eddlemans.

The Eddlemans sued Gray for wrongful death in August 2012. Gray sought bankruptcy protection in January 2013, and the Eddlemans agreed to enforce their wrongful death claim only up to the limits of Gray’s insurance policy, \$100,000, in return for lifting the automatic stay. Gray received a discharge in bankruptcy on May 20, 2013.

Gray made a deal with her insurance company regarding the Eddleman payments without consulting the bankruptcy trustee.¹ The trustee reopened the bankruptcy to evaluate this claim, because the insurance policy belonged to the estate, not to Gray.

After her insurance company paid the restitution in the manslaughter case, Gray took the position that only \$73,000 remained to pay the Eddlemans in the wrongful

¹ The insurance company agreed to make the restitution payment in exchange for Gray’s assignment of a potential bad faith claim to the company.

death action. They, not surprisingly, took the position that they were still owed \$100,000 and the \$27,000 payment was a “gift” to Gray from her insurance company.

Gray then filed a complaint in interpleader in April 2014. She deposited the \$73,000 with the court, alleging that both the Eddlemans and the bankruptcy trustee were claiming the money. In May 2014, she moved for a temporary restraining order preventing further actions on claims against her, on the ground that the Eddlemans were prosecuting a lawsuit against her (the wrongful death action) that involved the interpleaded funds.

The trustee received permission from the bankruptcy court to abandon the estate’s claim to the insurance proceeds in June 2014, and the interpleader action was dismissed a week later. Pursuant to the order dismissing the action, the money deposited with the court was returned to Gray.

Both sides filed cost bills, and both sides filed motions to tax costs. The trial court denied Gray’s motion and granted the motion of the Eddlemans, for \$1,344.

On appeal, Gray takes issue with the trial court’s determination the Eddlemans were the prevailing parties and therefore entitled to costs. She asserts that if anyone is a prevailing party, she is.

DISCUSSION

To determine whether the trial court ruled correctly, we need first to examine the nature and procedure of an interpleader action. “Interpleader is an equitable proceeding by which an obligor who is a mere stakeholder may compel conflicting claimants to money or property to interplead and litigate the claims among themselves instead of separately against the obligor. . . .” (4 Witkin, Cal. Procedure (5th ed. 2008) Pleading, § 237, p. 317; see § 386.) Under section 386, subdivision (b), any person or entity “against whom double or multiple claims are made, or may be made, by two or more persons which are such that they may give rise to double or multiple liability, may

bring an action against the claimants to compel them to interplead and litigate their several claims.”

““In an interpleader action, the court initially determines the right of the plaintiff to interplead the funds; if that right is sustained, an interlocutory decree is entered which requires the defendants to interplead and litigate their claims to the funds.’ [Citation.] Then, in the second phase of an interpleader proceeding, the trial court also has ‘the power under [Code of Civil Procedure] section 386 to adjudicate the issues raised by the interpleader action including: the alleged existence of conflicting claims regarding the interpleaded funds; plaintiffs’ alleged position as a disinterested mere stakeholder; and ultimately the disposition of the interpleaded funds after deducting plaintiffs’ attorney fees.’ [Citation.]” (*Shopoff & Cavallo LLP v. Hyon* (2008) 167 Cal.App.4th 1489, 1513–1514; see *San Francisco Sav. Union v. Long* (1898) 123 Cal. 107, 109 [interpleader is a “twofold contest”]; *State Farm Fire & Casualty Co. v. Pietak* (2001) 90 Cal.App.4th 600, 612.)

If the court sustains the plaintiff’s right to interplead the funds during the first phase, “an interlocutory decree is entered Upon an admission of liability and deposit of monies with the court, the plaintiff then may be discharged from liability and dismissed from the interpleader action.” (*Dial 800 v. Fesbinder* (2004) 118 Cal.App.4th 32, 43.) “The effect of such an order is to preserve the fund, discharge the stakeholder from further liability, and to keep the fund in the court’s custody until the rights of the potential claimants of the monies can be adjudicated.” (*Ibid.*) The court (or a jury) may also determine the factual basis of any deficiency in the interpleaded funds as claimed by one or more of the defendants. (§ 386, subd. (e).)

The Code of Civil Procedure section 1032,² subdivision (b), entitles a prevailing party to costs. Section 1032, subdivision (a)(4), defines “prevailing party” as

²

All further statutory references are to the Code of Civil Procedure.

including “the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant.”

We review a trial court’s determination that a litigant is a prevailing party for abuse of discretion. (See *Villa De Las Palmas Homeowners Assn. v. Terifaj* (2004) 33 Cal.4th 73, 94; *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.) When the issue involves the interpretation of a statute, we review that de novo as a question of law. (See *California Teachers Assn. v. San Diego Community College Dist.* (1981) 28 Cal.3d 692, 699.) A mixed question of law and fact requires review of the facts upon which the court based its legal reasoning for substantial evidence. (*Kellogg v. Garcia* (2002) 102 Cal.App.4th 796, 802.)

Although Gray discusses each category of section 1032, subdivision (b), at length, we need not address them all. One category clearly applies to this situation: “a defendant where neither plaintiff nor defendant obtains any relief.” Gray’s interpleader action was dismissed shortly after the bankruptcy trustee abandoned his claim to the insurance proceeds. The trial court never made any rulings on the merits. Most significantly for this appeal, Gray’s right to interplead the funds was never adjudicated, she never got a discharge from liability, and she was never dismissed, leaving the two claimants to litigate their respective rights. Instead, the interpleaded money was returned to Gray, and the case was dismissed without any substantive rulings.³ In effect, both Gray and the Eddlemans ended exactly where they had begun.

Gray argues on appeal that the defendant in an interpleader action cannot be a prevailing party because an interpleader action is not “adversarial” as between the

³ There were two rulings on Gray’s ex parte application for a temporary restraining order. The first ruling ordered the case transferred to the same judge who was overseeing the wrongful death action. The second one denied Gray’s request for an order shortening time to hear the TRO. The court never ruled on the request for the order itself.

interpleading plaintiff and the defendants, citing *Cantu v. Resolution Trust Corp.* (1992) 4 Cal.App.4th 857 (*Cantu*). *Cantu* was a malicious prosecution action, which was dismissed after a demurrer was sustained. One issue before the court was whether the savings and loan association could be liable for malicious prosecution for filing an interpleader action that was dismissed after settlement. (*Id.* at pp. 870-872.)

The reviewing court held that the plaintiff, *Cantu*, could not state a cause of action for malicious prosecution because, among other reasons, the interpleader action had not terminated in his favor. “A termination is favorable when it reflects “the opinion of someone, either the trial court or the prosecuting party, that the action lacked merit or if pursued would result in a decision in favor of the defendant.”“ [Citation.] ‘It is not enough . . . merely to show that the proceeding was dismissed.’ [Citation.] The termination must demonstrate the innocence of the accused. . . . [¶] The test is whether or not the termination tends to indicate the innocence of the defendant or simply involves technical, procedural or other reasons that are not inconsistent with the defendant’s guilt. [Citations.] . . . [¶] . . . [I]t is difficult to comprehend how *Cantu* can logically plead any fact which would indicate that the interpleader action terminated in his favor. There was no accused, and [the savings and loan association] did not attempt to establish any party’s culpability. *Cantu*’s innocence or guilt were [*sic*] simply not at issue. As between an interpleader plaintiff and the named claimants, an interpleader action simply is not adversarial – the interpleader plaintiff attempts to *offer* money to the named claimants, not take money away. . . . Here, on the merits, *Cantu* could not have been either a winner or loser” (*Cantu, supra*, 4 Cal.App.4th at pp. 881-882.)

But *Cantu* dealt with a completely different issue: whether a party had “prevailed” as that term is understood for purposes of malicious prosecution. That is simply not the issue before us. And it certainly does not accurately reflect the Gray/Eddleman interpleader. This interpleader was decidedly adversarial. For example, plaintiff Gray sought a TRO against the Eddleman defendants, to prevent them from

going on with their wrongful death suit. Moreover, one of the issues up for determination in Gray's interpleader was whether she owed the Eddlemans \$27,000 – in addition to the \$73,000 she deposited with the court – or whether deposited funds would wipe out her debt to them.⁴ This was a hotly disputed issue between Gray and the Eddlemans.

The *Cantu* court was dealing with a favorable termination in the malicious prosecution context. (See *Sheldon Appel Co. v. Albert & Olier* (1989) 47 Cal.3d 863, 871 [favorable termination necessary element of malicious prosecution action].) It was not addressing the definition of a prevailing party under section 1032. The statutory definition of prevailing party includes “a defendant in whose favor a dismissal is entered” and “a defendant where neither plaintiff nor defendant obtains any relief.” (§ 1032, subd. (4).) For malicious prosecution purposes, the first kind of statutory prevailing party may well not have obtained a favorable termination (see *Cantu, supra*, 4 Cal.App.4th at p. 882) and the second kind definitely did not. If no one prevailed, there is no favorable termination and no basis for a malicious prosecution cause of action. Under section 1032, however, if no one wins or loses, the defendant is the prevailing party. Whether one has prevailed in a prior lawsuit – and is therefore eligible to sue for malicious prosecution – is a question separate from whether one meets the statutory definition of “prevailing party” and is therefore entitled to costs.

An interpleader plaintiff may not care which of the competing defendants ultimately winds up with the money, but that does not mean it seeks no relief. In the first phase of an interpleader action, the court determines whether there is, in fact, a basis for the lawsuit. If there is, the plaintiff obtains relief in the form of a release from liability and a dismissal. If there is a dispute about a deficiency – as there was in this case – the plaintiff obtains relief on that score as well. Finally, a plaintiff is eligible for attorney

⁴ Section 386, subdivision (e) provides, in pertinent part, “In the event the amount deposited shall be less than the amount claimed to be due by one or more of the conflicting claimants thereto . . . any issues of fact involved in determining whether there is a deficiency in such deposit . . . shall be tried by the court or a jury”

fees and costs out of the deposited funds under section 386.6, which Gray requested in her complaint. Filing an interpleader action by its nature seeks some form of relief from the court.

Gray's interpleader action was dismissed before anyone could obtain any of the relief afforded by the procedure. When no one obtains relief, section 1032 regards the defendant as the prevailing party. That is what the court determined here.

Gray further argues that *she* was the prevailing party in the interpleader action because filing it forced the Eddlmans to settle the wrongful death suit without going to trial.⁵ Nothing in the record supports this assertion, and we do not consider factual matters outside the record. (See *Lona v. Citibank, N.A.* (2011) 202 Cal.App.4th 89, 102.) Likewise, nothing in the record supports Gray's assertion the interpleader action was dismissed because it became moot after the Eddlemans' wrongful death action settled.⁶ According to the record, the action was dismissed because Gray, as plaintiff, applied ex parte to dismiss the action and retrieve the interpleaded funds.

Neither Gray nor the Eddlemans obtained any relief from the interpleader action. The Code of Civil Procedure specifically deals with this circumstance. There is no need to cast about for another basis for awarding costs. Under section 1032, the Eddlemans are the prevailing parties, and prevailing parties are entitled to their costs.

⁵ Gray maintains that the Eddlemans insisted on a trial to get a \$5 million "vanity judgment," to punish her for their daughter's death, even though they had agreed to limit their recovery to the insurance policy limits of \$100,000.

⁶ Gray's request for dismissal, filed on June 23, 2014, refers to the action as being "moot." This does not, however, constitute a ruling from the court that the action was dismissed for that reason.

DISPOSITION

The postjudgment orders granting respondents' motion to tax costs and denying appellant's motion are affirmed. Respondents are to recover their costs on appeal.

BEDSWORTH, ACTING P. J.

WE CONCUR:

MOORE, J.

THOMPSON, J.